

**Oroville Facilities Relicensing
Federal Energy Regulatory Commission Project No. 2100
Draft Summary of the Plenary Group Meeting
January 27, 2004**

The Department of Water Resources hosted a meeting for the Plenary Group on January 27, 2004 in Oroville. A summary of the discussion, decisions made, and action items is provided below. This summary is not intended to be a transcript of the meeting, or to indicate agreement or disagreement with any of the items summarized, except where expressly stated. The intent is to present a summary for interested parties who could not attend the meeting. The following are attachments to this summary.

Attachment 1	Meeting Agenda
Attachment 2	Meeting Attendees
Attachment 3	Settlement Agreement Process Overview Presentation
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Attachment 9	Plenary Group Comments on Recreation and Socioeconomics Work Group Presentation

Welcome and Introductions

Attendees were welcomed to the Plenary Group meeting and introduced themselves and their affiliations. The Facilitator reviewed the proposed agenda and desired outcomes for the meeting. Participants were informed that Ralph Torres representing DWR requested his portion of the Process Update presentation be moved to the beginning of the next agenda item as he needs to leave early due to an emergency. She asked the group if anyone had heartburn with re-arranging the presentation order. Participants did not express any heartburn with the change. The proposed agenda and a list of meeting attendees are appended to this summary as Attachments 1 and 2, respectively.

Process Update

Settlement Agreement Process Overview

Ralph provided participants with a settlement agreement process overview as envisioned by DWR as well as a preview of the settlement schedule during the remainder of the year. The overview is included as Attachment 3.

Ralph described a settlement agreement as a mutually accepted plan for the future that documents a comprehensive agreement between the licensee and the parties who sign the agreement, and expresses support of the parties to the license application. The settlement agreement will serve as a basis for filing the new license application and regulatory approvals enabling issuance of a new license by the Federal Energy Regulatory Commission. The document will also: (1) acknowledge that the new license satisfies any remaining issues/disputes under the original license, (2) document mutually agreed-to resolution of issues outside FERC jurisdiction, and (3) provide mechanisms for implementation of all terms and

conditions. Ralph described the technical aspects and attributes of a settlement agreement and described several potential settlement approaches.

The settlement negotiation structure as envisioned by DWR will consist of the main settlement negotiation group, negotiation sub-groups, and separate Tribal/DWR discussions. The main settlement negotiation group will establish the settlement process and ground rules, address procedural issues, negotiate both jurisdictional and non-jurisdictional issues, and negotiate a final package. Ralph's presentation also included an outline of the relationship between the main settlement negotiation group and the Plenary Group, as well as the relationship between the main settlement group and the various collaborative work groups. Ralph suggested that the Plenary Group was becoming the main settlement negotiation group.

Participants were informed that internal pre-settlement coordination has begun within DWR. The settlement negotiation group kick-off meeting is scheduled for March 30, 2004 and DWR will be sending out invitations in the next couple of weeks. Topics to be covered during the first meeting include the potential use of settlement negotiation training, establishing the settlement process and agreeing on ground rules. Ralph also described issue-oriented site tours planned for that day. Ralph reminded everyone that the time frame is short and it will be a challenge to reach settlement by October 2004 but he feels that with open minds and focused effort, the collaborative is poised to reach settlement. He added that DWR intends to file an application on time because there are severe ramifications if it is filed late.

Mary Westin with the Mercury Register Newspaper wanted to know the criterion for placing issues on Appendix B. Ralph responded that if an issue were deemed outside FERC's jurisdiction, it would be placed on Appendix B. Placement of issues on Appendix A or B will also be discussed during negotiations.

Eric Zigas representing the City of Oroville asked the location and frequency of settlement negotiation meetings. Ralph responded that meeting logistics would be discussed further at the kick-off meeting and suggested perhaps alternating locations between Sacramento and Oroville. He added that the settlement negotiation group could meet as often as two days per month.

Cathy Hodges with Equestrian Trail Riders/Hikers asked when the term of the new license would be determined. Ward Tabor with DWR replied that FERC would decide on the license term; however, the Alternative License Process can make a recommendation. Harry Williamson with the National Park Service asked if the Initial Offer of Settlement would include DWR's preferred alternative. Ralph replied that it would. Michael Pierce stated that Butte County does not support a 50-year license at this time.

Sharon Stohrer with the State Water Resources Control Board noted that the tentative settlement schedule included in Ralph's presentation did not indicate a circulation date for the draft Application for License. Ward responded that the Preliminary Draft Environmental Assessment distributed in late April 2004 for public review and comment would essentially be Exhibit E of the Draft License Application and the April document would also include drafts of the other License Application exhibits.

Michael Pierce asked for clarification on confidentiality for public entities. Ralph responded that once agreement is reached on an issue and it is ready for presentation to the public, confidentiality would not apply. Ward Tabor added that they are asking for compliance consistent with the revised Process Protocols. The Plenary Group discussed the need to define a process that would facilitate continued discussion on the Project during the life of the new

license. Cathy Hodges asked if someone interested in the negotiation discussions could obtain all the information through the Public Records Act. Ward Tabor replied that ongoing negotiations would be exempt from the PRA.

John Schlotterbeck requested clarification on stakeholder involvement once the new license has been issued. He asked if DWR was suggesting that once a condition is part of the new license, stakeholders would be able to revisit the issue over the life of the license. Ralph responded that the intent was not to change a condition; he was referring to potential adaptive management approaches that might be needed for continued input/review over the term of the license for specific issues.

Eric Zigas representing the City of Oroville asked if DWR considered the Initial Offer of Settlement to be a confidential document, and could he present the settlement agreement to the City of Oroville's City Council. Ward replied that presenting the document to a representative's principal would not be a violation of the revised Process Protocols. Kevin Zeitler asked if individuals would be involved with settlement negotiation discussions. Ralph replied that, where possible, organizations would represent individual's interests and concerns; however, the intent is not to exclude anyone. DC Jones, a local resident, commented that throughout the ALP it was implied that individuals could be part of negotiation discussions. DC indicated that he does not represent an organization but has been very involved with the process and as an individual he intends to be involved in settlement negotiations.

Bill Connelly asked how confidentiality would be approached when multiple stakeholders support common interests. Ward reiterated that in order to have frank discussions, it is important that discussions are kept confidential. The premise is that until an issue is seeking final approval from stakeholder decision makers, it is necessary to attempt to maintain discussions in confidence. Ward noted that DWR could not dictate how public entities conduct meetings; those entities must make their own Brown Act determination about meeting in closed session. Eric Zigas asked whether DWR would inform stakeholders when holding private meetings. Ward replied that there is no restriction for any stakeholder desiring to meet with any other stakeholder. Sharon Stohrer added that sidebar negotiations would be brought back to the main settlement negotiation group for approval prior to becoming part of the settlement agreement.

Kevin Zeitler asked if unanimous approval was required for the settlement agreement. Ralph commented that DWR has committed to submitting a settlement agreement along with its draft Application for License. DWR would identify those who signed the agreement and FERC would be notified who did not agree to the settlement agreement. Ralph reiterated the need to craft a settlement alternative for submittal to FERC. Ward commented that signing the settlement agreement is an individual choice and DWR is looking for a critical mass of support on what the Project should look like for the next license term. John Schlotterbeck asked whether the settlement agreement would address all issues. Ward replied that DWR is looking for a single settlement agreement that would cover as many resource areas as appropriate. Michael Melanson, with the Metropolitan Water District of Southern California, mentioned three possible alternatives and asked if DWR would use the Best Alternative to a Negotiated Agreement as the Initial Offer of Settlement. Ward said not necessarily, because we still have unfinished studies. The final PDEA would focus on mitigation of project impacts, absent a settlement agreement.

Process Update

Mark Andersen provided an update on where we are in the relicensing process. The presentation is included as Attachment 4. A letter from DWR with a list of Study Plan reports and deliverables shared with the collaborative over the last 14 months was distributed to Plenary Group participants (Attachment 5). Plenary Group members were asked to review the list and provide any factual corrections to the documents or identify specific omissions or deviations relative to the agreed on scopes of work for these studies by February 29, 2004 to Rick Ramirez, Manager of DWR's Oroville Facilities Relicensing Program, 1416 Ninth Street, Room 1601, Sacramento, California 95814.

Mark also informed participants that the Public Reference File located in Room 742 at DWR's Sacramento headquarters was relocated to Room 525. Cathy Hodges asked if an additional PRF was located at DWR's Oroville Field Division on Glen Drive. Mark responded that the more centrally-located Oroville Public Library on Mitchell Avenue housed the local PRF.

Sharon Stohrer inquired whether DWR plans to provide a listing of reports that have not been delivered and the anticipated delivery date. Mark said DWR is compiling such a list and feels it may be available by the next Plenary Group meeting and posted on the web site. Roger Masuda, representing Butte County, asked where he could find the reports on DWR's relicensing web site. Participants were told a link to the study reports could be found under "Documents". The Facilitator informed the group that should they have any problems locating documents, they could call toll-free (866) 820-8198 or send an email to orovillep2100@water.ca.gov.

Harry Williamson asked how comfortable DWR is going to be to proceed into settlement negotiations before the needs analysis is completed. Mark replied that due to the study timing, this is going to be an iterative process and added that DWR will distribute any new information relative to studies to the collaborative as soon as possible.

Michael Pierce commented that the Study Plan deliverable list had no mention of a cumulative impacts analysis. Mark replied that cumulative effects are addressed in a number of the Study Plans, and that a specific cumulative effects study plan will not be prepared. Ward added that the PDEA is the primary document for this analysis and cumulative effects would be described within the document.

Cathy Hodges asked if DWR and NOAA Fisheries have solved their outstanding issues related to cumulative effects. Rick Ramirez replied that DWR and NOAA Fisheries continue to work through their unresolved issues and had reached agreement on the approach contained within the fish passage study. Eric Theiss with NOAA Fisheries indicated that NOAA is working internally on how to proceed and he feels there are areas that have not been investigated yet to be discussed.

Resource Action Process

Mark Andersen informed participants that currently there are approximately 500 individual proposed resource actions that either continue to be refined within the respective work groups, or have been recommended to the Plenary Group and forwarded to the PDEA team. He reminded the group that although all of the RAs are forwarded to the PDEA team, it does not mean they will get equal treatment. He added that many of the RAs would likely be part of the Initial Offer of Settlement. Updates on how the proposed resource actions are being used within the settlement group to arrive at an agreement will be brought back to the Plenary Group, as

needed. The settlement negotiation group will also have the ability to request additional technical information from the technical work groups.

Roger Masuda asked how DWR plans to present the RAs to the settlement negotiations group. Mark replied that the April 2004 draft PDEA would contain a comprehensive list of all the RAs. This list will show which work group was assigned to a particular RA. Rick Ramirez reminded the group of the site tours Ralph briefly discussed and how they might provide an excellent opportunity to distribute RA packets.

Eric Zigas asked what role the Engineering and Operations modeling will have in the PDEA and whether it would offer any guidance. Mark Andersen responded that benchmark scenario results and information relating to temperature scenarios are nearly completed and DWR modelers are working closely with the PDEA team to incorporate information developed through the modeling effort.

Michael Melanson wanted to know if the National Environmental Policy Act/California Environmental Quality Act document would be prepared as a joint document. Ward Tabor said FERC is uncomfortable with circulating a single document. FERC will determine which document it wants to circulate for NEPA and DWR will simultaneously circulate the same document for CEQA. The Plenary Group discussed the ex parte rule, which constrains FERC staff from direct communication with the applicant and makes it difficult to work through a joint document. Ward stated that DWR intends to submit a PDEA that meets FERC's needs under NEPA and DWR's needs under CEQA.

According to the schedule presented, the Plenary Group would not meet in February and that the kick-off meeting for the settlement group is scheduled for March 2004.

Meeting Summary and Action Items – December 16, 2003

Work Group Meeting Abstracts

The Facilitator informed participants that abstracts covering work group meetings held since the last Plenary Group meeting are included with the meeting agenda. Meeting abstracts are included as Attachment 6. More detailed work group meeting summaries are posted on the Oroville Facilities Relicensing web site. The Facilitator reminded participants that revisions or corrections to Plenary Group meeting summaries are to be submitted directly to her. Hard copies of the December 16, 2003 meeting summary and attachments were available to today's meeting.

Action Items – December 16, 2003

The Facilitator reviewed the status of action items from the December 16, 2003 Plenary Group meeting as follows:

Action Item #142:	Review correspondence between Butte County and DWR related to the draft cumulative effects analysis guidance document.
Status:	Ralph Torres stated the DWR has sent a letter to Butte County and that DWR is currently trying to make arrangements for a meeting.

- Action Item #143:** Provide DWR with specific questions related to trails and cumulative impacts in advance of ORAC meeting.
- Status:** Ralph is working with DWR's Division of Operations and Maintenance to address the issue. He offered Cathy Hodges the opportunity to meet with the appropriate DWR staff, if she was interested. Cathy indicated she would like to have such a meeting.
- Action Item #144:** Describe the process for moving RAs through to settlement, including the role of both the settlement group and the Plenary Group.
- Status:** Completed
- Action Item #145:** Send LWG-29 back to the LUWG for further consideration.
- Status:** Jim Upholt with DWR informed participants that the LUWG met on January 26, 2003 and has agreed to include it on its list of RAs that were transferred to another work group. The Facilitator added that LWG-29 was redundant on the LULMA list.

Work Group Resource Action Presentation

Recreation and Socioeconomics Work Group

Douglas Rischbieter, the DWR Resource Area Manager for the Recreation and Socioeconomics Work Group (RSWG) presented the RSWG RA development process and list of recommended RAs for consideration (Attachment 7). The RSWG reviewed and organized its RAs geographically, and held discussions on which RAs should be high priority for environmental analysis, and which would be most appropriate for settlement discussions. The RSWG will be reviewing approximately three to four study plans a month for the next four to five RSWG meetings. Doug presented the RSWG RA matrix with approximately 233 RAs that have been categorized based on stakeholder comments, ideas, and proposals. The RSWG has prioritized and placed RAs on one of the four lists identified below.

- "A" List – Proposed RAs recommended for detailed environmental analysis
- "B" List – Proposed RAs not recommended for environmental analysis
- "S" List – Proposed RAs most appropriate for settlement discussions
- "T" List – Trails-related RAs for separate analysis and General Planning

Participants were informed that trails-related RAs are on a separate list; however, the comprehensive trails plan submitted by the Lake Oroville Joint Powers Authority has been included on the "A" list. Doug commented that the current Department of Parks Recreation's Recreation General Plan is approximately 30 years old, and that these types of plans do not usually have a life span that long. A copy of the RSWG RA matrix and Plenary Group comments are appended to this summary as Attachments 8 and 9, respectively.

Michael Pierce commented that some RAs included in the "settlement" category (e.g. LF-3 and LF-28) are within the Project boundary and Butte County feels should be included on the "A" list. Harry Williamson with the National Park Service asked whether the "A" list has been "scrubbed" pending the Needs Analysis report, and what would happen to RAs not meeting the Needs Analysis criteria. Doug indicated that the list has been reviewed with preliminary understanding of the study results and the RAs not meeting the Needs Analysis criteria may still be evaluated in the Preliminary Draft Environmental Assessment document. Harry noted that DWR is using preliminary data from reports and Doug confirmed that generally, preliminary data is being used and there is very little available from the Needs Analysis.

Sharon Stohrer with the State Water Resources Control Board asked when the RAs included on the "S" list would get environmental analysis. Doug reminded the Plenary Group that the April 2004 draft PDEA is a draft document and additional information may be required or developed between its release and the January 2005 document release. She commented that she has "heartburn" with preconceived notion of what is in or out of Exhibits A or B. Ken Kules with the Metropolitan Water District of Southern California asked what the SWRCB's interest is in non-jurisdictional RAs and added that he thought the SWRCB was not going to participate in settlement negotiations. Sharon replied that the SWRCB will be at the negotiation table and will attempt to convey potential SWRCB terms and conditions (401 requirements).

Pete Dangermond, representing the JPA, complimented Doug on his thoroughness and thoughtfulness while compiling the list of 233 RAs and stated that there is community consensus that 6 RAs (three from the "B" list and three from the "S" list) should be moved to the "A" list. Pete requested these six RAs be added to the PDEA analysis. Michael Pierce concurred with the JPA request and added that the JPA represents a large portion of the local stakeholders interested in recreation. Doug Rischbieter stated that based on the established criteria, the six JPA RAs have been placed on the appropriate lists. The Plenary Group discussed the potential resource actions and agreed to ask the RSWG to reconsider placement of the six proposed resource actions. The remaining lists will be forwarded to the PDEA team.

Eric Theiss with NOAA Fisheries asked for a synopsis of the PDEA review schedule, particularly with respect to cumulative effects. The PDEA will be filed with FERC in January 2005, which will be followed by a formal comment period. Harry Williamson asked if participants would be provided with a listing of remaining RSWG study plan completion dates. Doug indicated a list would be provided at the January 29, 2004 RSWG meeting. Participants were informed that four reports have been reviewed over the last six weeks, and copies of those reports would be available at the January RSWG meeting. The Needs Analysis will be available in June 2004.

Next Steps

The Facilitator commented that there was only one agenda item (RSWG RA update) for a possible Plenary Group meeting in February 2004. It was suggested to cancel the February meeting and have one in March 2004. Eric Theiss said that he did not understand the RA and PDEA completion process and recommended a February Plenary Group meeting. Rick Ramirez proposed holding the February meeting via teleconference. Eric Zigas, representing the City of Oroville, suggested canceling the February meeting because the April 2004 PDEA will not include significant environmental analysis of the proposed recreation RA's. The Plenary Group agreed to cancel the February Plenary Group meeting and next meet on March 23, 2004 with the time and location to be determined.

Action Items

The following action items identified by the Plenary Group include a description of the action, the participant responsible for the action, and the due date.

Action Item #146: Provide any factual corrections to the documents or identify specific omissions or deviations relative to the agreed on scopes of work for distributed studies by February 29, 2004 to Rick Ramirez, Manager of DWR's Oroville Facilities Relicensing Program, 1416 Ninth Street, Room 1601, Sacramento, California 95814.

Responsible: Collaborative
Due Date: February 29, 2004

Action Item #147: Provide a listing of reports that have not been delivered and the anticipated delivery date.

Responsible: DWR
Due Date: April 23, 2004

Action Item #148: Ask the RSWG to reconsider placement of the six proposed resource actions identified by JPA.

Responsible: RSWG
Due Date: February 2004